



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Lee B. Drake, M.D. Decision and Order**

On December 5, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lee B. Drake, M.D. (Registrant), of Hattiesburg, Mississippi. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, on the ground that he does not hold authority to dispense controlled substances in Mississippi, the State in which he is registered with the Agency. Show Cause Order, at 1(citing 21 U.S.C. § 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered with DEA as a practitioner with authority to dispense controlled substances in schedules II through V under Registration No. BD3577965, at the registered address of 6524 U.S. Highway 98, Hattiesburg, Mississippi. *Id.* The Order also alleged that Registrant's registration does not expire until June 30, 2017. *Id.*

The Show Cause Order then alleged that on July 8, 2016, Registrant surrendered his authority "to prescribe and administer controlled substances in . . . Mississippi" and that he is "without authority to [dispense] controlled substances in" the State. *Id.* The Order asserted that as a consequence of the loss of his state authority, "DEA must revoke" his registration. *Id.* (citing 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3)).

The Show Cause Order notified Registrant of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43). The Order

also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

On December 7, 2016, a Diversion Investigator (DI) with the DEA Jackson, Mississippi District Office accomplished service by hand-delivery of the Show Cause Order to Registrant. *See* GX 2, at 2 (DI's Declaration).

On January 10, 2017, the Government forwarded to my Office its Request for Final Agency Action (cited as RFFA) along with an evidentiary record. In its Request, the Government represents that since the date of service of the Show Cause Order, it "has not received a request for hearing or any other reply from" Registrant. RFFA, at 1-2. Based on the Government's representation and the DI's declaration, I find that more than 30 days have passed since the date of service of the Show Cause Order and that neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of hearing, and issue this Decision and Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

#### **FINDINGS of FACT**

Registrant is the holder of DEA Certificate of Registration No. BD3577965, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, at the registered address of Women's Pavilion of South Mississippi, 6524 U.S. Highway 98, Hattiesburg, Mississippi. GX 1 (Certificate of Registration). His registration does not expire until June 30, 2017. *Id.*

On July 8, 2016, Registrant voluntarily surrendered his medical license to the Mississippi State Board of Medical Licensure (Medical Board), stating in a letter to the Board's President that he was relinquishing his right to practice medicine. GX 3, at 2. On July 13, 2016, the Medical Board issued a memorandum to various governmental and private entities informing them that Registrant had voluntarily surrendered his medical license effective July 12, 2016. *Id.* at 3. As Registrant neither responded to the Show Cause Order nor submitted any evidence to show that his state license has been reinstated, I find that he does not possess authority to dispense controlled substances in Mississippi, the State in which he is registered with the DEA.

### **DISCUSSION**

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (1978). Thus, the Agency has further held that “the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather[,] it is whether the Respondent is currently authorized to handle controlled substances in the [S]tate.” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Hooper*, 76 FR at 71371; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

By virtue of the surrender of his medical license, Registrant currently lacks authority to dispense controlled substances in Mississippi, the State in which he holds his DEA registration, and he is not entitled to maintain his registration. Accordingly, I will order that his registration be revoked.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BD3577965, issued to Lee B. Drake, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Lee B. Drake, M.D., to renew or

modify his registration, be, and it hereby is, denied. This Order is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: February 9, 2017

Chuck Rosenberg  
Acting Administrator

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